

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-121087-08

Date:

October 03, 2008

X =

State =

A =

B =

Trust =

D1 =

D2 =

D3 =

D4 =

Dear :

This responds to a letter dated April 29, 2008, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. At the time of election, A was the sole shareholder of X. On D3, shares were transferred to Trust which was then an eligible S corporation shareholder. On D4, Trust ceased to be an eligible shareholder, but it is represented that it was eligible to elect qualified subchapter S trust (QSST)

treatment under § 1361(d). However, B, the sole beneficiary of Trust, inadvertently failed to timely make a QSST election. Therefore, X's S election terminated on D4. For the period beginning two years before D4 through D4, B reported all of Trust's income from X on B's individual income tax returns.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D4, because of the inadvertent failure of the beneficiary of Trust to make the QSST election, and that this termination of X's S election was an inadvertent termination within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D4 and thereafter, provided X's S corporation election was valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon Trust's beneficiary filing a QSST election for Trust with an effective date of D4, with the appropriate service center within 60 days of the date of this ruling. A copy of this letter should be attached to the QSST election. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X is a small business corporation under § 1361(b), or whether

Trust is a QSST within the meaning of § 1361(d)(3). This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes